

1 THE HON. JAMES L. ROBART  
2  
3  
4  
5  
6  
7  
8  
9

10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 SEATTLE DIVISION

13  
14 SECURITIES AND EXCHANGE COMMISSION,

Civil Action No. C-15-1350-JLR

15 Plaintiff,

16 vs.

17 PATH AMERICA, LLC; PATH AMERICA SNOCO  
18 LLC; PATH AMERICA FARMER'S MARKET, LP;  
PATH AMERICA KINGCO LLC; PATH  
19 AMERICA TOWER, LP; PATH TOWER  
SEATTLE, LP; POTALA TOWER SEATTLE, LLC;  
and LOBSANG DARGEY,

  
[PROPOSED] ORDER GRANTING  
MOTION FOR PRELIMINARY  
INJUNCTION

20 Defendants, and

21 POTALA SHORELINE, LLC; and POTALA  
22 VILLAGE KIRKLAND, LLC,

23 Relief Defendants.

24

25

26

27

28

1 This matter came before the Court on the motion of plaintiff Securities and Exchange  
2 Commission (the “Commission”) for an order of preliminary injunction and other ancillary  
3 relief, to restrain and enjoin Defendants Lobsang Dargey; Path America, LLC; Path America  
4 SnoCo LLC; Path America Farmer’s Market, LP; Path America KingCo LLC; Path America  
5 Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LLC (collectively  
6 “Defendants”) during the pendency of this case. On August 24, 2015, the Court granted the  
7 Commission’s Motion for Temporary Restraining Order. *See* Docket No. 9. The current  
8 motion seeks orders: (1) Preliminarily enjoining Defendants from engaging in specified  
9 conduct; (2) Freezing Defendants’ assets and specified assets of Relief Defendants Potala  
10 Shoreline, LLC and Potala Village Kirkland, LLC while this case is pending or until further  
11 order of the Court; (3) Freezing assets currently held in escrow in connection with  
12 investments in Path America Tower, LP and Path Tower Seattle, LP and Path America  
13 Farmer’s Market, LP while this case is pending or until further order of the Court; (4)  
14 Requiring Defendant Dargey to repatriate assets; (5) Prohibiting the destruction of documents;  
15 and (6) Requiring Defendant Path America, LLC to prepare an accounting of all money  
16 obtained from investors.

17 The Court, having considered: (1) the complaint filed by the Commission in this case;  
18 (2) the Commission’s Motion for Preliminary Injunction and the Memorandum of Law in  
19 support; (3) the Declarations of Michael D. Foley, Steven D. Buchholz, and Bernard B.  
20 Smyth, and all exhibits attached to those declarations; and any proceedings before the Court,  
21 finds that:

- 22 1. This Court has jurisdiction over the subject matter of this action, and as to all  
23 parties, Defendants and Relief Defendants, and venue properly lies in this District.
- 24 2. The Commission has made a sufficient and proper showing in support of the  
25 relief granted herein, as required by Section 20(b) of the Securities Act of 1933 (“Securities  
26 Act”), 15 U.S.C. § 77t(b), and Section 21(d) of the Securities Exchange Act of 1934  
27 (“Exchange Act”), 15 U.S.C. § 78u(b), by evidence establishing a prima facie case and a  
28 reasonable likelihood that Defendants have engaged in, are engaging in, are about to engage

1 in, and will continue to engage in, unless restrained and enjoined by order of this Court,  
2 transactions, acts, practices and courses of business that constitute violations of Section 17(a)  
3 of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C. §  
4 78j(b); and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5; and that Relief Defendants are  
5 in possession of the proceeds of those violations and have been unjustly enriched.

6       3. The Commission has demonstrated a likelihood of success on the merits of its  
7 action and that the balance of hardships weighs in its favor. With respect to the balance of  
8 hardships, the public interest weighs strongly in favor of issuance of injunctive relief.

9       4. Good cause exists to believe that, unless restrained and enjoined by order of  
10 this Court, Defendants and Relief Defendants will dissipate, conceal, or transfer from the  
11 jurisdiction of this Court assets which could be subject to an order directing disgorgement or  
12 the payment of civil money penalties in this action. It is therefore appropriate for the Court to  
13 convert the previously ordered freeze on the assets and accounts of Defendants and Relief  
14 Defendants into preliminary relief that remains in place while this action is pending, so that  
15 prompt service on appropriate financial institutions, and other persons, can be made, thus  
16 preventing the dissipation of assets and preserving the status quo.

17       5. Good cause exists to believe that an order requiring Defendant Lobsang  
18 Dargey to repatriate assets moved overseas that originated with investors associated with the  
19 Path America transactions, as described in Plaintiff's Complaint, is necessary to effectuate  
20 and ensure compliance with the freeze imposed on the Defendants' and Relief Defendants'  
21 assets and accounts.

22       6. Good cause exists to believe that, unless restrained and enjoined by order of  
23 this Court, documents relevant to this action may be altered, destroyed or become unavailable  
24 for discovery.

25       7. Good cause exists to believe that an order requiring Defendant Path America to  
26 provide a verified accounting of all assets, money, and property obtained directly or indirectly  
27 from any investors associated with the Path America transactions, as described in the  
28 Plaintiff's Complaint, and received, spent, or held directly or indirectly by each of the

1 Defendants and Relief Defendants, or by others for their direct and indirect beneficial interest,  
2 is necessary to effectuate and ensure compliance with the freeze imposed on their assets.

3 I.

4 THEREFORE IT IS HEREBY ORDERED that the SEC's Motion for Preliminary  
5 Injunction is GRANTED.

6 II.

7 IT IS FURTHER ORDERED that Defendants Lobsang Dargey; Path America, LLC;  
8 Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC;  
9 Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LLC are  
10 preliminarily restrained and enjoined until further order of the Court from, directly or  
11 indirectly, in the offer or sale of any securities, by the use of any means or instruments of  
12 transportation or communication in interstate commerce or by the use of the mails:

13 A. Employing any device, scheme or artifice to defraud;

14 B. Obtaining money or property by means of any untrue statement of a  
15 material fact or any omission to state a material fact necessary in order to make the  
16 statements made, in light of the circumstances under which they were made, not  
17 misleading; or

18 C. Engaging in any transaction, practice, or course of business which  
19 operates or would operate as a fraud or deceit upon the purchaser;

20 in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

21 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure  
22 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this  
23 order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees,  
24 and attorneys; and (b) other persons in active concert or participation with Defendants or with  
25 anyone described in (a).

26 III.

27 IT IS FURTHER ORDERED that Defendants Lobsang Dargey; Path America, LLC;  
28 Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC;

1 Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LLC are  
2 preliminarily restrained and enjoined until further order of the Court from, directly or  
3 indirectly, in connection with the purchase or sale of any security, by the use of any means or  
4 instrumentality of interstate commerce, or of the mails, or of any facility of any national  
5 securities exchange:

6           A.     Employing any device, scheme or artifice to defraud;  
7           B.     Making any untrue statement of a material fact or omitting to state a  
8               material fact necessary in order to make the statements made, in the light of the  
9               circumstances under which they were made, not misleading; or  
10           C.     Engaging in any act, practice, or course of business which operates or  
11               would operate as a fraud or deceit upon any person;

12 in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5  
13 thereunder, 17 C.F.R. § 240.10b-5.

14 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure  
15 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this  
16 order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees,  
17 and attorneys; and (b) other persons in active concert or participation with Defendants or with  
18 anyone described in (a).

19                  IV.

20 IT IS FURTHER ORDERED that Defendants Lobsang Dargey; Path America, LLC;  
21 Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC;  
22 Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LLC are  
23 preliminarily restrained and enjoined until further order of the Court from, directly or  
24 indirectly participating in the issuance, offer, or sale of any security of any entity controlled  
25 by, or under joint control with, any of them, including but not limited to securities of Path  
26 America, LLC; Path America SnoCo LLC; Path America Farmer's Market, LP; Path America  
27 KingCo LLC; Path America Tower, LP; and Path Tower Seattle, LP.

1 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure  
2 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this  
3 order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees,  
4 and attorneys; and (b) other persons in active concert or participation with Defendants or with  
5 anyone described in (a).

6 V.

7 IT IS FURTHER ORDERED that Defendants Lobsang Dargey; Path America, LLC;  
8 Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC;  
9 Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LLC are  
10 preliminarily restrained and enjoined until further order of the Court from directly or  
11 indirectly soliciting any person or entity to purchase or sell any security.

12 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure  
13 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this  
14 order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees,  
15 and attorneys; and (b) other persons in active concert or participation with Defendants or with  
16 anyone described in (a).

17 VI.

18 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, an  
19 immediate freeze shall be placed on:

20 a. All monies and assets (with an allowance for necessary and reasonable living  
21 expenses to be granted only upon good cause shown by application to the Court with notice to  
22 and an opportunity for the SEC to be heard) in all accounts at any bank, financial institution  
23 or brokerage firm, all certificates of deposit, and other funds or assets, held in the name of, for  
24 the benefit of, or over which account authority is held by Defendants Lobsang Dargey; Path  
25 America, LLC; Path America SnoCo LLC; Path America Farmer's Market, LP; Path America  
26 KingCo LLC; Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle,  
27 LLC; and

1        b.      Those monies and assets that constitute or are derived from the proceeds of, or  
2 are otherwise related to, the activities set forth in the Complaint in accounts at any bank,  
3 financial institution or brokerage firm, all certificates of deposit, and other funds or assets,  
4 including real or personal property, held in the name of, for the benefit of, or over which  
5 account authority is held by Relief Defendants Potala Shoreline, LLC and Potala Village  
6 Kirkland, LLC;  
7 including but not limited to the accounts listed below:

Account Name	Bank	Account Number
Path America, LLC	East West Bank	XXXXXX3648
Path America Farmer's Market, LP	East West Bank	XXXXXX3663
Potala Tower Seattle, LLC	East West Bank	XXXXXX2490
Path America Tower, LP	East West Bank	XXXXXX3084
Potala Shoreline, LLC	East West Bank	XXXXXX4785
Path Tower Seattle, LP	East West Bank	XXXXXX5006
Lobsang Dargey	Bank of America	XXXX1856
Potala Village Kirkland, LLC	American West Bank	XXXXXXX0150

14           Any bank, financial institution or brokerage firm holding such monies and assets  
15 described above, that receives actual notice of this Order, by personal service or otherwise,  
16 including facsimile transmissions, electronic mail, or overnight delivery service, shall hold  
17 and retain within its control and prohibit the withdrawal, removal, transfer or other disposal of  
18 any such funds or other assets, except as otherwise ordered by this Court.

19           VII.

20           IT IS FURTHER ORDERED that an immediate freeze shall be placed on all monies  
21 and assets held in accounts at any bank or financial institution in connection with escrow  
22 agreements relating to Path America Tower, LP; Path Tower Seattle, LP; or Path America  
23 Farmer's Market, LP; including but not limited to Central Escrow, Inc. escrow number  
24 244000-MM (for Path America Tower, LP), escrow number 263000-MM (for Path Tower  
25 Seattle, LP), and escrow number 202000-MM (for Path America Farmer's Market, LP).  
26 Monies and assets held in such accounts shall not be released even if the conditions for  
27 release in the escrow agreements controlling the accounts are met, except as otherwise  
28 ordered by this Court.

VIII.

IT IS FURTHER ORDERED that, within seven (7) days from the entry of this Order,  
Defendant Lobsang Dargey shall transfer to the registry of this Court assets, funds and other  
property held in foreign locations in the name of any Defendant or any person acting in active  
concert or participation with any of them, or for the benefit or under the direct or indirect  
control of any of them, or over which any of them exercises control or signatory authority,  
whether by wire transfer, third-party payment processor or otherwise, at the direction of either  
Defendants or any of their agents, representatives, advisors, or anyone acting in active concert  
or participation with any of them.

IX.

IT IS FURTHER ORDERED that Defendant Path America, LLC, within seven (7) days of receiving actual notice of this Order, by personal service or otherwise, unless it has previously provided the accounting as previously ordered, shall prepare and deliver to the SEC a detailed and complete accounting, which shall include:

15        1. A complete schedule of all transfers or payments of funds to Defendants, and  
16 to any other entity controlled by them, from investors in connection with the misconduct  
17 described in the Complaint (the identification shall include the amount of each such transfer  
18 or payment, the date of the transfer or payment, and the name, address, account number and  
19 financial institution of the party making and the party receiving the transfer or payment);

20        2. A complete schedule, in detail, of the precise disposition of each transfer or  
21 payment identified in response to paragraph 1 above and all assets derived therefrom,  
22 including but not limited to:

23           a. the nature and results of any investment in which the funds were used;  
24           b. any subsequent transfer or payment of the funds (the identification shall  
25 include the amount of each such transfer or payment, the date of the transfer or payment, the  
26 name, address, account number and financial institution of the party making and receiving the  
27 transfer or payment, and the reason for the transfer or payment); and

c. any fees or expenses charged and a detailed statement of the nature and purpose of such fees and expenses.

3. A complete schedule identifying, by name and address, all persons, entities and accounts currently holding funds or assets derived from the transfers or payments described in paragraph 1 above and the reason each received the funds or assets (the identification shall include the amount each received, the date received, the reason received, the institution and account number or location in which the funds or other assets are held and the name, address, account number and financial institution of the person or entity who provided each with the funds or other assets);

4. A complete schedule identifying assets of every type and description with a value of at least five hundred dollars (\$500) presently owned by or held for the direct or indirect benefit, or subject to the direct or indirect control, of Defendants or Relief Defendants, whether in the United States or elsewhere; and,

5. A complete schedule of all accounts in the name of Defendants or Relief Defendants, held at any bank, securities, and other financial institution, identified by institution, branch address and account number, from February 1, 2012 through the present.

Such accounting shall be filed with the Court and a copy shall be delivered to the SEC to the attention of Susan F. LaMarca. After completion of the accounting, Defendant Path America, LLC shall produce to the SEC at a time agreeable to the SEC, all books, records and other documents supporting or underlying the accounting.

X.

IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, each of the Defendants Lobsang Dargey; Path America, LLC; Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC; Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LP; and Relief Defendants Potala Shoreline, LLC and Potala Village Kirkland, LLC, are preliminarily restrained and enjoined until further order of the Court from, directly or indirectly: destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, any documents, which includes all books,

1 records, computer programs, computer files, computer printouts, contracts, emails,  
2 correspondence, memoranda, brochures, or any other documents of any kind in their  
3 possession, custody or control, however created, produced, or stored (manually, mechanically,  
4 electronically, or otherwise), pertaining in any manner to Defendants Lobsang Dargey; Path  
5 America, LLC; Path America SnoCo LLC; Path America Farmer's Market, LP; Path America  
6 KingCo LLC; Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle,  
7 LP.

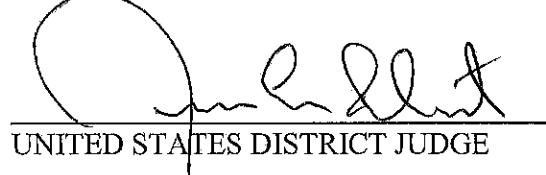
8

9

10 Dated this 6 day of <sup>October</sup> September, 2015

11

12

  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Presented by:

2  
3 s/ Susan F. LaMarca  
4 Susan F. LaMarca  
5 Bernard B. Smyth  
6 Attorneys for Plaintiff  
7 SECURITIES AND EXCHANGE COMMISSION  
8 44 Montgomery Street, Suite 2800  
9 San Francisco, CA 94104  
10 (415) 705-2500  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28